

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- x

ARACELIS POLANCO, as *Administrator of the*
ESTATE OF LAYLEEN CUBLETTE-POLANCO,

Plaintiff,

-against-

THE CITY OF NEW YORK, COLLEEN VESSELL,
TYKISHA WILLIAMS, TALAYA GALES, BIANCA
GARCIA, SHEVONNE DAVIS, and JANE DOE,

Defendants.

STIPULATION AND
ORDER OF
SETTLEMENT AND
DISCONTINUANCE

19-CV-04623 (SJB)

----- x

WHEREAS, Plaintiff Aracelis Polanco, as the Administrator of the Estate of Layleen Cubilette-Polanco, commenced this action by filing a complaint on August 12, 2019, and an amended complaint on November 15, 2019, alleging that Defendants violated the rights of the decedent, Layleen Cubilette-Polanco (hereinafter, “decedent”), while she was in the custody of the New York City Department of Correction (“DOC”);

WHEREAS, Defendants City of New York and Colleen Vessell (the “City Defendants”) have denied any and all liability arising out of Plaintiff’s allegations;

WHEREAS, Defendants Tykisha Williams, Talaya Gales, Bianca Garcia, and Shevonne Davis (collectively, the “Individual Defendants”; together with City Defendants, the “Defendants”), have also denied any and all liability arising out of Plaintiff’s allegations;

WHEREAS, the Individual Defendants have asserted cross-claims against the City of New York (the “City”), alleging that if they are found liable for any of Plaintiff’s allegations, the City would then be liable to the Individual Defendants for negligence and/or indemnification;

WHEREAS, the City has denied any and all liability arising out of the Individual Defendants’ allegations;

WHEREAS, Plaintiff and Defendants (collectively, the "Parties") now desire to resolve the issues raised in this litigation (the "Action"), without further proceedings and without admitting any fault or liability; and

WHEREAS, Plaintiff has authorized her counsel to settle this matter on the terms set forth below;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned, as follows:

1. This Action is hereby dismissed against Defendants, with prejudice, and without costs, expenses, or attorneys' fees in excess of the amount specified in paragraph "2" below.

2. The City of New York hereby agrees to pay Plaintiff the sum of five million and nine hundred thousand dollars (*i.e.*, \$5.9 million) in full satisfaction of all claims that were or could have been brought in or related to this Action, including claims for costs, expenses and attorney fees, in the following specified manner: \$3,915,045.63 payable to "David B. Shanies Law Office LLC, as Attorney for Aracelis Polanco, Administrator of the Estate of Layleen Cubilette-Polanco"; and \$1,984,954.37 payable to "David B. Shanies Law Office LLC" for attorney fees and disbursements. In consideration for the payment of this sum, Plaintiff agrees to dismiss and discontinue this Action, with prejudice, and to release Defendants, the New York City Department of Correction ("DOC"), New York City Health + Hospitals ("H+H"), Correctional Health Services ("CHS"), the City of New York, any present or former officials, employees representatives or agents of the DOC, H+H, CHS and/or the City of New York or any agency thereof, from any and all liability, claims, or rights of action under the United States Constitution, and/or under any federal, state, or local law(s), whether known or unknown, which were or could have been alleged in this Action, including claims for costs, expenses, and attorneys' fees.

3. Payment of the amounts set forth in paragraph "2" above will be made within ninety (90) days after the approval of this stipulation by the Court and the receipt by the Defendant City of New York of the "Affidavit Concerning Liens" and a Release, both executed by Plaintiff.

4. Plaintiff shall be responsible for the payment of any federal, state and/or local taxes on the payment specified in paragraph "2" above.

5. The City and the Individual Defendants acknowledge that in light of the settlement of this Action, and in consideration of the City's declining to seek contribution against the Individual Defendants in connection with this settlement, the Individual Defendants voluntarily discontinue their cross-claims against the City with prejudice.

6. Plaintiff shall execute and deliver to counsel for City Defendants all documents necessary to effect this settlement, including, without limitation, a General Release based on the terms of paragraph "2" above, an Affidavit Concerning Liens, and a substitute W-9 form.

7. Nothing contained herein shall be deemed to be an admission by Defendants, the DOC, H+H, CHS, or the City of New York that they have, in any manner or way, violated Plaintiff's rights or the rights of the decedent, or the rights of any other person or entity, as defined in the constitutions, statutes, ordinances, rules or regulations of the United States, the State of New York, or the City of New York, or any other rules, regulations or bylaws of any department or subdivision of the City of New York. This Stipulation and Order of Settlement and Discontinuance shall not be admissible in, nor is it related to, any other litigation, administrative proceeding, or settlement negotiations.

8. Nothing contained herein shall be deemed to constitute a policy or practice of the DOC, H+H, CHS, the City of New York, or any agency thereof.

9. This Stipulation and Order of Settlement and Discontinuance contains all the terms and conditions agreed upon by the Parties hereto, and no oral agreement entered into at any time nor any written agreement entered into prior to the execution of this Stipulation regarding the subject matter of the instant proceeding shall be deemed to exist, or to bind the Parties hereto, or to vary the terms and conditions contained herein.

10. This document may be executed in subparts and, whether or not it is executed in subparts, a signature received by facsimile or electronic mail shall have the same force and effect as an original signature.

11. This Stipulation and Order is final and binding on all Parties, as well as their successors and assigns.

Dated: New York, New York
September 15, 2020

DAVID B. SHANIES LAW OFFICE
Attorneys for Plaintiff Aracelis Polanco
Administrator of the Estate of Layleen
Cubilette-Polanco
411 Lafayette Street, Sixth Floor
New York, New York 10003
(212) 951-1710
david@shanieslaw.com

By: David B. Shanies
David Shanies

WILLIAM P. NOLAN, ESQ.
Attorney for Defendant Tykisha Williams
1103 Stewart Avenue, Suite 200
Garden City, N.Y. 11530
(516) 280-6633

By: William P. Nolan
William P. Nolan

JAMES E. JOHNSON
Corporation Counsel of the
City of New York and Dr. Colleen Vessell
Attorney for City Defendants
100 Church Street, Room 2-174
New York, N.Y. 10007
(212) 356-2086
corsland@law.nyc.gov

By: Chlarens Orsland
Chlarens Orsland
Assistant Corporation Counsel

DONALD YANNELLA, P.C.
Attorney for Defendant Talaya Gales
233 Broadway, Suite 2370
New York, N.Y. 10279
(212) 226-2883

By: Donald Yannella
Donald Yannella

KOEHLER & ISAACS
Attorney for Defendant Bianca Garcia
62 Broadway, 25th Floor
New York, NY 1006
(917) 551-1300

By: A. James Bell
A. James Bell

FRANKIE & GENTILE, P.C.
Attorney for Defendant Sheyonne Davis
1565 Franklin Avenue, Suite 105
Mineola, N.Y. 11501
(516) 742- 6590

By: James Frankie
James Frankie

SO ORDERED:

/s/ Sanket J. Bulsara
U.S.M.J.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

ARACELIS POLANCO, *as Administrator of the*
ESTATE OF LAYLEEN CUBILETTE-POLANCO,

Plaintiff,

— against —

THE CITY OF NEW YORK, COLLEEN VESSELL,
TYKISHA WILLIAMS, TALAYA GALES,
BIANCA GARCIA, SHEVONNE DAVIS, and
JANE DOE,

Defendants.

Case No. 19-CV-4623 (SJB)

ORDER OF COMPROMISE

WHEREAS, Plaintiff Aracelis Polanco, as Administrator of the Estate of her late daughter, Layleen Cubilette-Polanco (the “Estate”), commenced this action on August 12, 2019 (the “Action”);

WHEREAS, the parties have agreed to settle all claims in the Action, including Plaintiff’s claim for attorneys’ fees and costs, for \$5.9 million (\$5,900,000.00);

WHEREAS, the parties have entered into a Stipulation of Settlement (“Stipulation of Settlement”); and

WHEREAS, pursuant to New York Estates, Powers & Trusts Law § 5-4.6, Plaintiff has requested that this Court approve the settlement as well as Plaintiff’s counsel’s attorneys’ fees and disbursements:

NOW, THEREFORE, IT IS HEREBY ORDERED that:

1. The settlement to resolve this Action in the amount of \$5,900,000.00 is approved and deemed adequate and reasonable, and Plaintiff Aracelis Polanco, as Administrator of the Estate of her late daughter, Layleen Cubilette-Polanco, is authorized to settle and discontinue the claims and causes of action of the Estate against the defendants in this Action.
2. Upon further approval of the settlement by the Surrogate's Court of Westchester County or other court of competent jurisdiction, Defendants shall deliver to Plaintiff's counsel two checks comprising the \$5,900,000.00 settlement amount (the "Settlement Amount"): one made payable to "David B. Shanies Law Office LLC, as Attorneys for Aracelis Polanco, Administrator of the Estate of Layleen Cubilette-Polanco," in the amount of \$3,915,045.63, and one to "David B. Shanies Law Office LLC," in the amount of \$1,984,954.37, representing attorneys' fees and disbursements.
3. Plaintiff's counsel shall deposit both checks in the firm's interest-bearing escrow account (the "Account").
4. Of the Settlement Amount, \$1,984,954.37 is approved as attorneys' fees and costs for David B. Shanies Law Office LLC, for services to the Plaintiff.
5. To the extent not already paid, David B. Shanies Law Office LLC shall pay from the Account all due and payable expenses, excluding attorneys' fees, approved by the Court.

6. All attorneys' fees and costs approved by this Court for the prosecution of the action for wrongful act, neglect or default, inclusive of all disbursements, shall be immediately payable from the Settlement Amount upon submission to this Court of proof of filing of a petition for allocation and distribution in the Westchester County Surrogate's Court on behalf of Layleen Cubilette-Polanco's Estate.

7. David B. Shanes Law Office LLC shall continue to serve as attorneys for the Estate until the entry of a final decree in the Surrogate's Court.

SO ORDERED.

Brooklyn, New York
Dated: October 2, 2020

/s/ Sanket J. Bulsara

THE HONORABLE SANKET J. BULSARA
UNITED STATES MAGISTRATE JUDGE